

Remarks/Arguments:

Claims 67-72 and 74-82 are pending in this application. Claims 1-66 and 73 have been canceled previously.

Rejections under 35 U.S.C. § 112

Claims 67-72 and 74-82 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action states that "[t]he newly added language 'being mated' [in claim 67], . . . in conjunction with 'after the body is placed in vasculature' . . . renders the claims confusing as to the scope" of the claim. The Office Action further states that "there is uncertainty as to whether the implanted state, and hence the actual engagement (or mating) of the extender with the first leg, is positively recited, or whether the conditional statement 'after the body is placed in vasculature' broadly encompasses a functional interpretation similar to that previously addressed" The Office Action also states that "the term 'configured' (claim 67, line 5) establish[es] a positional *capability* for the legs relative to vasculature rather than the actual inserted state."

Applicants respectfully submit that the phrase "being mated with the first leg after the body is placed in vasculature" describes an actual engagement of the extender with the first leg. As described in the specification at page 30, line 36 to page 31, line 37 in connection with one embodiment of the invention, the base member 112 and the first graft 114 will be in two separate arrangements. In the first arrangement, the base member 112 placed in the vasculature is **not** mated with the first graft 114. Then in the second arrangement, after following the process described in the specification at the location cited above, the base member 112 **is** mated at the first leg 132 to the first graft 114. Applicants respectfully submit that the language in claim 67 "being mated with the first leg after the body is placed in vasculature" refers to this second arrangement in which an extender, such as base member 112, is mated with a first leg, such as first graft 114.

Regarding the Office Action's characterization of the term "configured" as "a positional *capability*," Applicants disagree. Instead, Applicants respectfully submit that "configured" refers to a structural feature of the body and agree with the Board's construction of "configured" as "formed or shaped." Decision on Request for Rehearing at page 2. Therefore, Applicants respectfully submit that the term "configured" is not functional language.

Withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 101

Claims 67-72 and 74-82 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Office Action states that

The broadest reasonable interpretation of the claimed invention as a whole possibly encompasses the functional capability discussed [in the 35 U.S.C. § 112 rejection] and *definitely* . . . encompasses the actual mated insertion within vasculature of a human or other animal so that the claims are broad enough to cover a human in combination with the device (because both are necessarily present and engaged with one another during an implanted, mated state).

Applicants respectfully disagree with this characterization of the claimed invention. Applicants respectfully submit that the term "mated" in claim 67 refers specifically to the mating of a first leg, such as the first leg 132 of base member 112, to an extender, such as the first graft 114. Therefore, this mating that is claimed in claim 67 is a mating between two components and not the human body or other animal. A description of an embodiment of this mating can be found in the specification at page 30, line 36 to page 31, line 37.

Applicants respectfully submit that the word "body" in this claim is referring to a component of the claimed device, such as the base member 112 according to one embodiment, as described in the specification of this patent. Furthermore, the word "vasculature" in this claim is not being claimed, but rather is used to establish a point of reference.

For these reasons, and additionally in view of the remarks made above in connection with the rejections under 35 U.S.C. § 112, withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 102(e)

Claims 67-72 and 74-82 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,653,743 (hereinafter "Martin"). The Office Action states that Martin anticipates claims 67-72 and 74-82 for the reasons presented in the Examiner's Answer of May 25, 2006. Furthermore, the Office Action relies on the Decision on the Request for Rehearing dated December 30, 2008, which held that "Martin does contemplate that the length of short tube graft 8 might, in some instances, be longer than that length which terminates in the opening 6,

thus making short tube graft 8 the longer leg." Applicants respectfully submit that claims 67-72 and 74-82 are patentable over Martin for at least the reasons set forth below.

Applicants respectfully disagree with the assertion that Martin anticipates these claims. Applicants respectfully submit that the *short* tube graft 8 of Martin is never disclosed to be the longer graft. Although the Office Action relies for support on the Board's statement of what Martin may "contemplate," it is clear that Martin fails to disclose any embodiment in which the *short* leg is the longer of the two legs. Although there are ranges provided in Martin's specification (see column 2, line 65 to column 3, line 3), at no point does Martin teach or suggest actually making the *short* tube graft 8 the longer of the two legs.

Martin discloses that "[a] straight tube graft 18 may then [be] positioned to overlap the short tube graft 8 and to extend towards the common femoral artery." Applicants respectfully submit that Martin's own language reveals that the element 8 is envisioned to be the "short" leg. Furthermore, as depicted in FIG. 5, Martin only discloses mating the extender to the shorter of the two legs. As discussed in Martin, the purpose of using the straight tube graft 18 is to extend *short* tube graft 8 so that it extends into the vasculature. In contrast, and as illustrated in the embodiment shown in Applicants' FIGS. 3E, 3F and 3G, the advantage achieved by the invention recited in claim 67 is to extend the *longer* of the two legs.

Additionally, Martin refers to its graft 8 as the "short tube graft" throughout his disclosure. Martin refers to it as the "short tube graft 8" because Martin intends the short tube graft to be shorter than the opposite leg. The Office Action's citation to the Board's statement of what Martin may contemplate cannot make up for the failure of Martin to disclose an embodiment in which an extender is mated with the longer of two legs of a body.

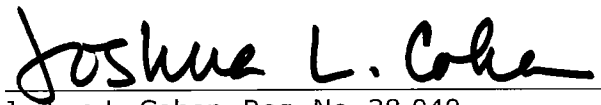
Because claims 68-72 and 74-82 depend from independent claim 67, Applicants respectfully submit that these claims are also not anticipated by Martin for at least the reasons stated above.

Withdrawal of this rejection is respectfully requested.

Conclusion:

In view of the remarks and arguments set forth above, Applicants respectfully submit that the pending application is in condition of allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink that reads "Joshua L. Cohen". The signature is written in a cursive, flowing style.

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Attachments:

Dated: August 18, 2009

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